

1  
2  
3  
4  
5  
6                   UNITED STATES DISTRICT COURT  
7                   WESTERN DISTRICT OF WASHINGTON  
8                   AT TACOMA

9                   JACK LECK, II,

10                  Petitioner,

11                  v.

12                  MARK STRONG,

13                  Respondent.

14                   CASE NO. 15-cv-05869 RJB

15                   **ORDER ADOPTING REPORT  
16                  AND RECOMMENDATION**

17                  THIS MATTER comes before the Court following the Report and Recommendation of  
18                  Magistrate Judge J. Richard Creatura. Dkt. 26. Petitioner filed an objection. Dkt. 27. The Court  
19                  has considered the Report and Recommendation, Petitioner's objection, and the remainder of the  
20                  file herein.

21                  The Court should adopt the Report and Recommendation. In response to Petitioner's  
22                  objections to the Report and Recommendation, the Court also adds the following:

23                  Petitioner makes six arguments, all without merit. Only Petitioner's first argument raises  
24                  anything not addressed in the Report and Recommendation.

25                  First, Petitioner argues that there is a conflict of interest that has arisen "as of the time the  
26                  court receives this document," because "Mark Strong will no longer be CEO/Superintendent of  
27                  the Special Commitment Center," but instead, an Assistant Attorney General who formally  
28                  represented the Center resume that role. Even if this is true, such a conflict would only harm

1 Respondent's ability to effectively respond and would have no bearing on the Court's  
2 consideration of the petition's merits.

3 Second, Petitioner argues that he should have been appointed counsel. The Report and  
4 Recommendation addressed this concern, rejecting the claim on the basis that it wrongly  
5 assumed a right to counsel at a civil, pre-SVP psychological examination. *Id.*, at 11-14.

6 Third, Petitioner argues that magistrate judge has "cloud[ed] the issues" and ignores the  
7 "jurisdiction and counsel issues presented[.]" This is incorrect; the magistrate judge directly  
8 addressed both issues. *Id.*, at 9-14.

9 Fourth, Petitioner argues that he has exhausted all available state remedies. The Report  
10 and Recommendation and this Court concur, but as explained, the petition fails on the merits, not  
11 because Petitioner failed to exhaust. *Id.*, at 5-8.

12 Fifth, Petitioner argues that Petitioner was "WAS NOT in custody NOR any jurisdiction  
13 of DOC" [sic] when his prison sentence expired. However, even if Petitioner is correct, as the  
14 Report and Recommendation explained, the purpose of federal habeas relief is not to litigate the  
15 application or interpretation of state law. *Id.*, at 9-11.

16 Sixth, Petitioner argues that his right to counsel was violated, because he is entitled to an  
17 attorney at all stages of his SVP proceedings. This argument is duplicative of his second  
18 argument, which was addressed by the Report and Recommendation. *Id.*, at 11-14.

19 \* \* \*

20 The Court, having reviewed the Report and Recommendation of Magistrate Judge J.  
21 Richard Creatura, objections to the Report and Recommendation, and the remaining record, does  
22 hereby find and **ORDER:**

23  
24

1                   (1)     The Court ADOPTS the Report and Recommendation and HEREBY DISMISSES  
2 Petitioner's petition; and

3                   (2)     The undersigned DENIES the issuance of a certificate of appealability. Petitioner  
4 failed to show that the state appellate courts' adjudication of grounds one and two was contrary  
5 to, or an unreasonable application of, clearly established federal law.

6                   **DATED** this 25<sup>th</sup> day of May, 2016.

7                     
8

9                   ROBERT J. BRYAN  
10                   United States District Judge

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24